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Report of the Select Committee on the Kerala Toddy Tappers' Welfare Fund Bill, 1968 and the Bill as reported by the Select Committee.

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THE KERALA TODDY TAPPERS' WELFARE FUND BILL, 1968.

(Report of the Select Committee)

The Select Committee to which the Kerala Toddy Tappers' Welfare Fund Bill, 1968 was referred, have considered the Bill clause by clause and now submit this, their Report with the Bill as reported by the Select Committee annexed thereto.

2. The Bill was published in the Gazette Extraordinary dated the 24th August 1968. The Bill was introduced in the Assembly on the 30th August 1968 and the motion for reference to a Select Committee was adopted on the 5th November 1968. The Committee met on the 15th November 1968 and 26th November 1968. The changes proposed by the Committee and the reasons therefor are set out in the following paragraphs:—

3. *Title.*—The Committee are of the view that all workers employed in connection with the manufacture, transport or sale of toddy should be brought within the purview of the Bill. Hence they consider that the title of the Bill should be changed as "The Kerala Toddy Workers' Welfare Fund Bill, 1968". The heading, long title, preamble and short title of the Bill have been modified accordingly.

4. *Clause 2.*—The Committee consider that clause 2(d) should be modified to provide that any person employed for wages in connection with the manufacture, transport or sale of toddy should also be included within the definition of the term 'employee'.

The Committee also feel that the words "or any other similar allowance, and any presents made by the employer" occurring in clause 2(j)(ii) and (iii) are not necessary. Accordingly, these words have been omitted from the definition of the term 'wages'.

5. *Clause 4.*—The Committee are of the view that even at present, by some agreement or otherwise, the employers are contributing 8% of the wages to the welfare funds. Therefore, they consider that the rate of contribution shall be 8% instead of 6½%. They also feel that provision shall be made making it compulsory on the part of the employer to contribute to the fund, as gratuity, in addition to the contribution stated above, an amount equal to 5% of the wages for the time being payable to each of the employees. Provision for this purpose has been suggested as sub-clause (2) of clause 4.

6. *Clause 6.*—The Committee are of the view that the 'members of the Welfare Fund Board' may be designated as "Directors

of the Board". They are also of the view that the words "representing Government in" in sub-clause (4) may be omitted. The clause has been suitably modified.

7. *Clause 7.*—The Committee consider that sub-clauses (1) and (2) may be clubbed together. Sub-clauses (4) and (5) may also be combined together. The clause has been modified accordingly.

8. *Clause 8.*—The Committee feel that sub-clause (5) of clause 8 may be amended so that any person aggrieved by an order under sub-clause (1) may prefer an appeal to any other authority as the Government may specify in this behalf within sixty days from the date of receipt of order and the decision of the Government or of such other authority shall be final. Sub-clause (5) has been revised for this purpose.

9. *Clause 14.*—The Committee are of the opinion that it is not necessary to include any penal provision in the scheme framed under the Act for non-compliance with the provision of the scheme. The penalty for non-compliance of the provisions of the scheme may be provided in the Act itself. Therefore, it is suggested that sub-clause (2) may be omitted and sub-clause (3) suitably modified. The Committee also suggest that the amount of fine of one thousand rupees provided in the clause may be reduced to five hundred rupees. Clause 14 has been suitably modified.

10. *Clause 15.*—This clause as originally drafted puts offences by the company and its officers on the same footing. The Government of India have suggested that this clause may be modified suitably so that the penal liability of the companies to whom the scheme is applicable may be properly determined with reference to the company and its officers separately. The officers of the company may further be given a chance of getting relieved by an order of court if they have acted honestly and reasonably. The Government of India have also suggested that the expression "every officer in charge of and responsible to the company for the conduct of business of the company" used in the original clause may be substituted by the term "officer of the company" since the above expression is somewhat vague and that the term "officer of the company" may be defined.

The Committee accept the suggestion of the Government of India and clause 15 has been modified on the lines suggested by the Government of India.

11. *New clause 18.*—The Committee consider that a new provision should be made in the Bill so that all welfare funds established either by custom or agreement before the date of the commencement of the Act shall stand transferred and vest in the Fund.

Accordingly a new clause namely, clause 18 has been suggested by the Committee for this purpose.

12. *Schedule.*—The Committee suggested that item 13 may be omitted in view of the deletion of sub-clause (2) of clause 14. A new item (item 16) is included in view of new clause 18.

13. Other changes made by the Committee are either verbal or consequential.

MATHAI MANJOORAN,
Chairman of the Select Committee.

THE KERALA TODDY WORKERS' WELFARE FUND BILL, 1968

(As amended by the Select Committee)

(Words underlined or sidelined indicate the amendments suggested by the Committee. Omissions are indicated in asterisks).

A

BILL

to provide for the constitution of a fund to promote the Welfare of toddy workers' in the State of Kerala.

Preamble.—WHEREAS it is expedient to provide for the constitution of a fund to promote the welfare of toddy workers' in the State of Kerala;

BE it enacted in the Nineteenth Year of the Republic of India, as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Toddy Tappers' Welfare Fund Act, 1968.

(2) It extends to the whole of the State of Kerala

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "Board" means the Toddy Workers' Welfare Fund Board constituted under section 6;

(b) "contribution" means a contribution payable in respect of a member under a scheme;

(c) "employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees and includes any person who has a licence for the manufacture, distribution or sale of toddy under the Abkari Act for the time being in force;

(d) "employee" means any person who is employed for wages in connection with the tapping manufacture, transport or sale of toddy and who gets his wages directly or indirectly from the employer and includes any person employed by or through a contractor or through an agent in or in connection with the tapping manufacture, transport or sale of toddy;

(e) "fund" means the Toddy Workers' Welfare Fund established under a scheme;

(f) "manufacture" means any process for the preparation of toddy and includes the preparation of a tree for tapping;

(g) "member" means a member of the Fund;

(h) "schedule" means the schedule to this Act;

(i) "scheme" means a scheme framed under this Act;

(j) "wages" means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—

(i) the cash value of any food concession;

(ii) overtime allowance, bonus, and commission * * * * * * * * * *

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3. *Toddy Workers' Welfare Fund.*—(1) The Government may, by notification in the Gazette, frame a scheme to be called the Toddy Workers' Welfare Fund Scheme for the establishment of a Fund under this Act for employees and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the scheme.

(2) The fund shall vest in, and be administered by the Board constituted under section 6.

(3) Subject to the provisions of this Act the Scheme framed under sub-section (1) may provide for all or any of the matters specified in the Schedule.

4. *Contributions and matters which may be provided for in the scheme*:—(1) The contribution which shall be paid by the employer to the Fund shall be eight per cent of the wages for the time being payable to each of the employees, and the employee's contribution shall be equal to the contribution payable by the employer in respect of him:

(2) The employer shall, in addition to the contribution payable under sub-section (1), contribute to the fund as gratuity an amount equal to five per cent of the wages for the time being payable to each of the employees.

Provided that where the amount of any contribution payable under this Act involves a fraction of a rupee, the scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.

5. *Modifications of Scheme.*—(1) The Government may, by notification in the Gazette add to, amend or vary the scheme framed under this Act.

(2) Every notification under sub-section (1) shall be laid as soon as may be, after it is issued, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it

is so laid or the session immediately following the Legislative Assembly agrees in making any modification in the notification or agrees that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

6. *Constitution of Board.*—(1) The Government may, by notification in the Gazette, constitute with effect from such date as may be specified therein, a Board to be called the Toddy Workers' Welfare Fund Board for the administration of the fund and to supervise or carry out the activities financed from the fund.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Board shall consist of such number of Directors as may be appointed by the Government and they shall be chosen in such manner as may be provided for in the scheme:

Provided that the Board shall include an equal number of Directors representing the Government, the employers and the employees.

(4) One of the Directors of * * * * * * * * * the Board shall be appointed by the Government as chairman.

(5) The Government shall publish in the Gazette the names of all the Directors of the Board.

(6) The Board shall administer the fund vested in it in such manner as may be specified in the scheme.

7. *Appointment of officers.*—(1) The Government may appoint a Chief Welfare Fund Inspector and as many Welfare Fund Inspectors as they consider necessary to assist the Chief Welfare Fund Inspector in the discharge of his duties. The Chief Welfare Fund Inspector shall be the Chief Executive Officer of the Board.

(2) The Board may with the previous approval of the Government appoint such staff as it may consider necessary.

(3) The method of recruitment, salary and allowances, discipline and other conditions of service of the Chief Welfare Fund Inspector and the Welfare Fund Inspectors shall be such as may be specified by the Government and the method of recruitment, salary and allowances, discipline and other conditions of services of the staff appointed by the Board shall be such as may be specified by the Board with the previous approval of the Government.

8. *Determination of amounts due from employers.*—(1) The Chief Welfare Fund Inspector or any other Welfare Fund Inspector authorised by him in this behalf may, by order, determine the amount due from any employer under the provisions of this Act or of the scheme and for this purpose may conduct such inquiry as he may deem necessary.

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court for trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses.

(3) Any inquiry under this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code.

(4) No order determining the amount due from any employer shall be made under sub-section (1) unless the employer has been given a reasonable opportunity of being heard.

(5) Any person aggrieved by an order under sub-section (1) may prefer an appeal to the Government or any other authority as may be specified by the Government within sixty days from the date of the receipt of the order and the decision of the Government or of such authority on such appeal shall be final.

9. *Mode of recovery of moneys due from employers.*—Any amount due from the employer in pursuance of the provisions of this Act or the Scheme may, if the amount is in arrear, be recovered in the same manner as an arrear of land revenue.

10. *Protection against attachment.*—(1) The amount standing to the credit of any member in the fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member and no receiver appointed under the Insolvency Act, 1955 shall be entitled to or have any claim on any such amount.

(2) Any amount standing to the credit of a member in the fund at the time of his death and payable to his nominee under the scheme shall, subject to any deduction authorised by the scheme vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member.

11. *Priority of payment of contributions over other debts.*—Where any employer is adjudicated insolvent or being a company an order for winding up is made, the amount due from the employer under the scheme shall, where the liability therefor has accrued before the order of adjudication or winding up is made, be deemed to be included among the debts which under section 64 of the Insolvency Act, 1955 or under section 530 of the * * Companies Act, 1956 are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up as the case may be.

12. *Employer not to reduce wages etc.*—No employer shall by reason only of his liability for the payment of any contribution to the fund, reduce whether directly or indirectly the wages of any employee to whom the scheme applies of the total quantum of benefits to which the employee is entitled under the terms of his employment express or implied.

13. *Members of Board etc., to be public servants.*—Every Director of the Board, the Chief Welfare Fund Inspector and every Welfare Fund Inspector appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

14. *Penalty.*—(1) Whoever for the purpose of avoiding any payment to be made by himself under this Act or under the scheme or of enabling any other person to avoid such payment knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both.

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(2) Whoever contravenes or makes default in complying with any of the provisions of this Act or of the scheme shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both

(4) No court shall take cognisance of any offence punishable under this Act *** *** *** except on a report in writing of the facts constituting such offence made with the previous sanction of the Government or such authority as may be specified in this behalf by the Government, by the Chief Welfare Fund Inspector or any Welfare Fund Inspector, appointed under this Act.

15. *Offences by Companies.*—(1) If the person committing an offence under this Act is a company, every officer of the company who is in default as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that in any proceeding against an officer of the company in respect of an offence under this Act it appears to the Court hearing the case that the offence is attributable to the negligence, default, breach of duty,

misfeasance or breach of trust committed by the officer, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the Court may relieve him either wholly or partly, from his liability on such terms as it may think fit.

(2) Notwithstanding anything contained in sub-section(1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any wilful negligence, default, breach of duty, misfeasance or breach of trust on the part of any officer of the company, such officer of the company, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) "company" means any body corporate and includes a firm, a co-operative society or other association of individuals;

(b) "director" in relation to a firm means a partner in the firm;

(c) "officer of the company" means the Managing Director, Directors, Managing Agent, Secretary, Treasurer or Manager of the company and includes the office bearers of firm, co-operative society or other association of individuals; and

(d) "officer of the company who is in default" means any officer of the company who is knowingly guilty of non-compliance, failure, or contravention of the provisions of this Act or the scheme made thereunder or who knowingly and wilfully authorises or permits such non-compliance, failure or contravention.

16. *Power to recover damages.*—Where an employer makes default in the payment of any contribution to the fund under this Act the Government may recover from the employer damages not exceeding twenty-five per cent of the amount of arrears as they may think fit to impose.

17. *Protection for acts done in good faith.*—No suit or other legal proceeding shall lie against any director of the Board or the Chief Welfare Fund Inspector or any other person in respect of anything which is in good faith done or intended to be done under this Act or under the scheme.

18. *Special provisions for transfer and vesting of welfare funds established by custom or agreement.*—All welfare funds established either by custom or agreement before the date of commencement of this Act and standing to the credit of the employees on the date of commencement of this Act shall, notwithstanding anything to the contrary contained in any law for the time being in force or in any deed or other instrument, stand transferred to and vest in the fund established under section 3 and shall be credited to the accounts of the employees entitled thereto in the fund.

SCHEDULE

[*See* Section 3(3)]

MATTERS FOR WHICH PROVISION MAY BE MADE IN THE SCHEME

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1. The time and manner in which contributions shall be made to the Fund by employers and by, or on behalf of employees (whether employed directly, or by or through a contractor) the contributions which an employee may, make under section 4 and the manner in which such contributions may be recovered.

2. The manner in which employees' contributions may be recovered by contractors from employees employed by or through such contractors.

3. The constitution of any committee for assisting the Toddy Workers' Welfare Fund Board.

4. The manner in which accounts shall be kept, the investment of moneys belonging to the Fund in accordance with any directions issued or conditions specified by the Government, the preparation of the budget, the audit of accounts and the submission of reports to the Government.

5. The conditions under which withdrawals from the Fund may be permitted and any deduction or forfeiture may be made and the maximum amount of such deduction or forfeiture.

6. The fixation by the Government in consultation with the Board the rate of interest payable to members.

7. The form in which an employee shall furnish particulars about himself and his family whenever required.

8. The nomination of a person to receive the amount standing to the credit of a member after his death and the cancellation or variation of such nomination.

9. The registers and records to be maintained with respect to employees and the returns to be furnished by the employees or contractors.

10. The form or design of any identity card, token or disc for the purpose of identifying any employee, and for issue, custody and replacement thereof.

11. The fees to be levied for any of the purposes specified in this Schedules.

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12. The further powers, if any, which may be exercised by the officers appointed under the Act.

13. The conditions under which a member may be permitted to pay premia on life insurance from the Fund.

14. The manner in which the members of the Board shall be chosen and appointed.

15. The conditions of service, duties and remuneration of officers appointed under this Act.

16. The manner in which any welfare fund vested under section 18 is to be brought and credited to the accounts of the employees entitled thereto in the fund.

17. Any other matter which is to be provided for in the Scheme or which may be necessary or proper for the purpose of implementing the Scheme.

Legislature Secretariat,
Trivandrum,
6th January 1969.

V. P. N. NAMBUDIRI,
Secretary,
Legislative Assembly.